

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

THE AIR CONDITIONING, HEATING AND
REFRIGERATION INSTITUTE, *et al.*,

Plaintiffs,

v.

Civ. No. 08-633 MV/RLP

CITY OF ALBUQUERQUE,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Plaintiffs' Motion and Memorandum Brief for Partial Summary Judgment on Preemption of the City of Albuquerque's Green Building Codes: Replacements (Doc. No. 69, filed December 17, 2008), Plaintiffs' Motion and Memorandum Brief in Support of Partial Summary Judgment as to Volume I of the Albuquerque Energy Conservation Code: Commercial Covered Products (Doc. No. 70, filed December 17, 2008), and Plaintiffs' Motion and Memorandum in Support for Partial Summary Judgment on Portions of Volume II and High Performance Buildings Ordinance (Doc. No. 71, filed December 17, 2008). For the reasons stated below, the Court will **DENY** the Motions without prejudice.

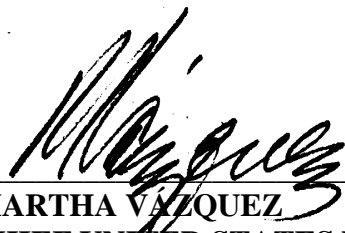
Plaintiffs filed their Motions on December 17, 2008. Plaintiffs subsequently filed their Second Amended Complaint (Doc. No. 77, filed January 13, 2009). A "pleading that has been amended under Rule 15(a) supersedes the pleading it modifies and remains in effect throughout the action unless it subsequently is modified." *Gilles v. United States*, 906 F.2d 1386, 1389 (10th Cir. 1990).

Proceedings in this case have been stayed since January 16, 2009, at the request of the Parties. The Parties seek another 60-day extension of the stay on the grounds that proposed amendments to the Albuquerque Energy Code and the High Performance Buildings Ordinance “might significantly reduce the matters in dispute in this action.” (Doc. No. 81, filed May 5, 2009).

Because Plaintiffs’ Motions relate to their First Amended Complaint, which has been superseded by their Second Amended Complaint, and because the proposed amendments to the City Code and Ordinance may reduce the matters in dispute, the Court will deny Plaintiffs’ Motions for Summary Judgment without prejudice. Plaintiffs may file motions for summary judgment after the stay is lifted.

IT IS SO ORDERED.

Dated this 9th day of June, 2009.



MARTHA VALQUEZ
CHIEF UNITED STATES DISTRICT JUDGE

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